



LEVETT ROCKWOOD  
P.C.

NEWSLETTER  
A Courtesy to Our Clients and Friends

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## NEW FEDERAL OVERTIME RULES ARE YOU IN COMPLIANCE?

Important changes to the overtime regulations under the federal Fair Labor Standards Act (“FLSA”) recently took effect. Most notably, the Department of Labor (“DOL”) made more low-wage personnel eligible for overtime pay by raising the minimum salary level for exempt employees to \$455 per week and replaced its old, two-tiered set of “job duties” tests for determining certain exemptions with a single, unified set of criteria.

This newsletter summarizes the key information employers need to know regarding these changes to ensure compliance with the new regulations.

### *Overview*

Unless an employee can be classified as “exempt” from FLSA overtime rules, the covered employee must be given overtime pay for all hours worked above forty in one work week. To be considered exempt, the following three conditions all must be met: (i) the employee must be paid on a salary basis, which is defined as a regular and predetermined amount of compensation; (ii) that salary must be above a specified amount; and (iii) the employee’s job duties must fall within an exempt classification.

The new regulations primarily affect the “salary level” and “job duties” tests. Under the old regulations, there were different tests depending upon salary level – a “short test” for employees making more than \$250 per week, and a stricter “long test” for employees making between \$155 and \$250 per week. In its new regulations, the DOL eliminated the distinction between the long and short job duties tests in favor of a standard duties test; it also raised the minimum salary to qualify for exempt status to \$455 per week.

The DOL also created an exemption for highly compensated white collar workers, and it added a

“safe harbor” for employers who in good faith make unintentional or isolated errors in payroll deductions for exempt employees.

### *Major Changes to FLSA’s Rules*

**Salary Floor Raised:** Employees who make less than \$455 per week must now be paid overtime if they work in excess of 40 hours in a work week, regardless of their job duties.

**“Executive” Exemption:** The employee must (a) manage some portion of the business or customarily and regularly direct the work of two or more full-time employees, and (b) have the authority for, or significant input into, hiring and firing decisions.

**“Administrative” Exemption:** The employee must (a) perform office or non-manual work directly related to the management or general business operations of the employer, and (b) exercise discretion and independent judgment with respect to matters of significance, *i.e.*, matters that have important consequences for the employer’s business.

**“Professional” Exemption:** This exemption applies to both learned professionals (*e.g.*, lawyers, doctors and accountants) as well as creative professionals (*e.g.*, actors, musicians and painters). To qualify, “learned” professionals must perform work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized instruction; “creative” professionals must have primary duties that include invention, imagination, originality or talent in a recognized field of artistic endeavor.

**Outside Sales:** The new regulations continue to provide a blanket exemption, regardless of salary, for outside sales personnel whose primary job duties are

to make sales or obtain orders from customers away from the employer's place or places of business.

**Computer Employees:** The regulations also exempt certain "computer employees," such as systems analysts, programmers, and software engineers or other similarly skilled computer workers from overtime if they make at least \$455 per week (or not less than \$27.63 per hour) and meet certain tests regarding their job duties.

**Blue Collar Workers/"First Responders" Not Exempt:** The new regulations apply solely to white collar employees who meet the salary and duties tests. Workers traditionally regarded as "blue collar" (*i.e.*, those who perform work involving repetitive operations with their hands, physical skill and energy) must be given overtime no matter how highly paid they may be. For example, an electrician or carpenter must be paid overtime regardless of base salary. Also, "first responders," such as police officers, fire fighters, emergency medical technicians and similar employees, are always eligible for overtime.

**Highly Compensated Workers:** White-collar employees who make over \$100,000 per year are exempt so long as they regularly perform at least one of the duties of an exempt employee.

**Deductions From Pay:** The new regulations permit docking of an exempt employee's pay for days off in certain situations, including certain disciplinary suspensions. The regulations also temper the general rule that an employer who takes improper deductions risks losing exempt status for an entire class of employees. The softer approach provides a "safe harbor" for employers who establish complaint policies for exempt employees and who make good faith efforts to comply with the FLSA – such employers will not risk the reclassification of their exempt employees on the basis of inadvertent or isolated instances of improper payroll deductions from those employees.

## ***State Law***

Employers must continue to analyze their individual state overtime laws and regulations in addition to the federal law. Where differences exist, the law more protective of the employee applies. For example, in Connecticut important differences include the following:

- Connecticut's threshold for the use of its "short tests" (which are very similar to the

FLSA short test) is a weekly salary of at least \$475. Therefore, employees making between \$455 and \$475 per week are subject to Connecticut's more rigorous "long tests" to qualify as exempt. Most notably, these long tests require employees to perform no more than 20% of their work (40% for retail or service employees) outside of the duties that would qualify them for exemption.

- Except for violating a safety rule of major significance, pay deductions from exempt employees' salaries due to disciplinary suspensions are not permitted.
- There are no special exemptions for "computer employees" or for employees earning over \$100,000 per year.

## ***What Steps Should You Take?***

1. Review the salaries of all employees currently classified as "exempt" to ensure that they are at least \$455 per week.
2. Perform an audit to review job descriptions and ensure that each description conforms to an exempt employee's actual job duties. Confirm that the duties satisfy one of the tests under the FLSA's administrative, executive, professional, computer or outside-sales exemptions.
3. For Connecticut employees who qualify under the executive, administrative or professional job duties tests, but who make between \$455 and \$475 per week, it may make sense to avoid the complexities of the Connecticut "long test" by simply paying those employees an additional \$20 per week to ensure they are exempt.
4. To take advantage of the FLSA "safe harbor" for inadvertent or isolated errors in payroll deductions, develop and communicate a policy, including a complaint procedure, that prohibits improper deductions from the salary of exempt employees.

If you would like advice on compliance with these new FLSA requirements or how to reconcile them with existing state laws, please contact **Russell F. Anderson** or **Patricia D. Weitzman** of our office at 203-222-0885.